151 Pa. St. 88; *Musgrove v. Morrison*, 54 Md. 161. In an action for subscriptions made after incorporation, *de facto* existence need not be shown. *Casey v. Galli*, 94 U. S. 673. As in eminent domain proceedings, there is also a difference of opinion as to whether *de jure* corporate existence need be shown in actions by corporations to collect assessments for benefits. That it must be shown, see *Dusenback v. Attica & B. G. Road Co.*, 43 Ind. 265. That it need not be, see *Evans v. Lewis*, 121 Ill. 478; *Reclamation Dist. No. 542 v. Turner*, 104 Cal. 334.

CRIMINAL LAW—REMARKS OF PROSECUTING ATTORNEY—ERROR.—PEOPLE v. WOLF, 95 N. Y. SUPP., 264.—*Held*, that the remarks of the prosecuting attorney to the jury cannot be made the basis of error where they have no tendency to create greater passion or prejudice than the admitted facts in evidence created. McLaughlin and Ingraham, JJ., *dissenting*.

As to what comments by counsel to the jury may be made the basis of error the courts are not all agreed. It has been held that intemperate language calculated to prejudice the jury and prevent a fair trial is ground for reversal. *Cargill v. Commonwealth*, 13 S. W. (Ky.) 916. But the objection to such remarks must be made promptly. *Grosse v. State*, 11 Tex. App. 364. So, also, where the accused has failed to testify in his own behalf, this may not be commented on by the prosecutor. *Price v. Commonwealth*, 77 Va. 393. Abusive language towards the defendant will be ground for reversal. *State v. Young*, 90 Mo. 666; *Stone v. State*, 22 Tex. App. 185; though the contrary has been held, *Anderson v. State*, 104 Ind. 467. But any characterization of the defendant, there being evidence to sustain such expressions, will be allowed. *State v. Brooks*, 92 Mo. 542.

DAMAGES—MENTAL SUFFERING.—WOODSTOCK IRON WORKS v. STOCKDALE, 39 S. W. 335 (ALA.).—*Held*, that a husband cannot recover damages for mental suffering to himself caused by the illness of his wife.

In actions for injury to persons mental suffering is an element of damage as an incident to the bodily suffering. *Chicago v. McLean*, 133 Ill. 148. But mental suffering for the injury to others is no ground of action. *Cowden v. Wright*, 24 Wend. 429; *Long v. Morrison*, 14 Ind. 595. And such has been the holding, as in the principal case, even when it is the husband's mental suffering for his wife's injury. *Hyatt v. Adams*, 16 Mich. 180. Some of the states, however, have made an exception to this rule in the case of telegraph companies, allowing a person who has suffered mental anguish through failure of delivery of a telegram to recover damages. *Relle v. Telegraph Co.*, 55 Tex. 308; *Tel. Co. v. Crocker*, 135 Ala. 492. Even in Texas, where this rule was started, it is confined to telegraph cases and exceedingly limited. *Tel. Co. v. Splar*, 126 Fed. 295. However most states decline to follow it. *Giddens v. Tel. Co.*, 111 Ga. 824.

EJECTMENT—INTEREST RECOVERABLE—MINERAL RIGHTS.—MORAGNE ET AL v. DOE EX DEM. MORAGNE, 39 S. E. (ALA.) 161.—*Held*, that an administrator may maintain ejectment to recover a mineral interest in lands.

"Ejectment will lie only for things whereof possession may be delivered by the sheriff." *Black v. Hepburne*, 2 Yeates 333. The thing claimed must be a corporeal hereditament. *Rowan v. Kelsey*, 18 Barb. 484. In this term have been included a room in a house, *Otis v. Smith*, 26 Mass. 293, and a real fixture, *Stancel v. Calvert*, 60 N. C. 104. But the action will not lie for a

mere license, a right of way, or an easement. *Hancock v. McAvon*, 151 Pa. St. 460. The English courts formerly treated all grants of minerals as incorporeal hereditaments because no livery of seisin could be made, but the general rule to-day is that such a grant passes an interest in land. *Caldwell v. Fulton*, 31 Pa. 475; *Fairchild v. Dunbar Furnace Co.*, 128 Pa. 497. In some cases, however, grant of right to take minerals from land, not being exclusive right to mineral products is considered a mere license. *Silsby v. Trotter*, 29 N. J. Eq. 228. But see *Beatty v. Gregory*, 17 Iowa, 109, where licensee, after entry and expenditure of labor and money, was allowed to maintain ejectment.

EQUITY—CANCELLATION OF INSTRUMENTS—FRAUD—REMEDY AT LAW. WILSON ET AL V. MILLER, 39 SOUTHERN, 178 (ALA.). *Held*, that the deed, under which a plaintiff claims in ejectment, will not be cancelled, on the ground that the deed and record have been fraudulently altered. Haralson, J., *dissenting*.

If an action at law on an instrument in writing can be fully defended on the ground that it was obtained by fraud, the defendant cannot file a bill for the cancellation and surrender of the document. *Cable v. U. S. Life Ins. Co.*, 191 U. S. 288. In actions of ejectment defendant may show invalidity or fraud of plaintiff's title. *Sherman v. Buick*, 93 U. S. 209; *Rogers v. Brent*, 10 Ill. 573. If there is an action pending against one in a suit at law wherein his title may be put in issue and established, there is no equity in a bill to quiet title, and such a bill will be dismissed. *Normant v. Eureka Company*, 39 Am. St. Rep. 45. Equity will entertain jurisdiction to remove cloud where complainant is in possession or from other cause without adequate legal remedy. *I. Story Eq. Juris.* Page 745, Note A; *Sullivan v. Finnegan*, 101 Mass. 447. In order that equity may cancel a deed it must constitute a cloud on title. In other words, it must be *prima facie* evidence of title. *Bispham's Equity*, 449.

EVIDENCE—COMPELLING PRODUCTION OF DOCUMENTS—SUBPŒNA DUCES TECUM.—MILLER V. MUTUAL RESERVE FUND LIFE ASSN., 139 FED. 864.—Where a *subpœna duces tecum* required the production of a large list of books and papers, many of which apparently can have no bearing on the issues raised by the pleadings, *held*, that the court will not punish the party for contempt for failure to obey the *subpœna*, but the party applying will be required to take out separate *subpœnas*, each of which may then be considered on its merits.

The judge in this case evidently considered the spirit much more than the letter of the law as the general rule is in line with the statutory provisions that the party must attend with the documents demanded and leave the question of their admission to the discretion of the court. *Reynolds on Ev.*, p. 168; In *ex parte Brown*, 7 Mo. App., 484, a manager of a telegraph office refused to produce his dispatch files, attempting to excuse himself under a statute which provided for punishment of any officer or servant of a telegraph company disclosing the contents of a dispatch, but he was obliged to produce the files or be in contempt. The penalty laid down in *Col. Fire Co. v. Purcell*, 25 La. Ann., 283, was that the party not producing books and papers under the *subpœna* should not be in contempt, but that the facts stated in the application may be taken as proved. Nor may an attorney refuse to submit his client's papers under his privilege as attorney, as this would be assuming